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United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

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February 18, 2005

The Honorable Judd Gregg,
Chairman, Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Kent Conrad,
Ranking Member, Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Gregg and Ranking Member Conrad:

This letter responds to your request for the Senate Indian Affairs Committee's views and estimates on the President's fiscal year 2006 budget request for Indian programs. Although we agree with the President's goals of funding programs with proven performance accountability and reducing the federal deficit, we disagree with many of the proposed funding cuts and the priorities set out in the budget.

We seek funding for programs that are meeting their goals of improving the lives of American Indians and Alaska Natives ("Indians") such as those designed for contracting and self-governance compacting. A recently released study by the Harvard Project on Indian Economic Development examined ten years of socioeconomic change as experienced by Indians living on Indian lands. It concluded that Indian tribes are experiencing economic growth and improved social well-being at rates that far exceed progress being made nationally, and the study attributes this progress to the policies of self-governance that encourage tribes to build and administer their own programs. Despite this improvement, however, the report notes that tremendous disparities continue to exist between Indians (in both gaming and non-gaming tribes), and other Americans.

These findings support the need for consistent federal funding for programs that help Indian tribes achieve self-determination and that allow local decision makers, not federal administrators, to determine how best to address local needs.

I. General Background Supporting The Committee's Budget Request.

There are 562 Federally-recognized tribes in the U.S., with 40% of tribes located in Alaska. The 2000 census identified over 2.4 million American Indians and Alaska Natives, with 511,000 living on Indian reservations, 97,000 in Alaska (18% of the state population), 229,000 in designated Indian statistical areas (areas with high Indian populations such as Oklahoma), and 1.6 million Indians living outside Indian areas. Approximately 4.1 million census respondents identified themselves in both the AI/AN racial category or ancestry and other races or ancestries.

Many of these individuals are or could be eligible for Federal services.

Funding for Indian programs falls under the United States' trust obligation to Indian tribes generally. This unique political and fiduciary relationship is grounded in the United States Constitution, treaties, federal statutes, and federal case law. The federal government's obligation also arises in part from cessions of millions of acres of land from Indian tribes to the United States in exchange for peace, protection of tribal sovereignty, as well as promises to provide a variety of programs and services. While the federal policy toward Indians has shifted over time, sometimes radically, for the last thirty years the Congress has promoted a policy of Indian self-determination, which encourages tribes to develop programs that best serve their members, lessen dependence on the federal government, and ensure their participation in the nation's economy.

Despite recent gains, Indians continue to rank well below the national average in measures of health, education, income, and welfare:

The Average Per Capita-Income of Indians Remains Lower than the National Average. Inflation adjusted per-capita income growth of reservation Indians grew by 83% over the last 30 years while for the U.S. population overall the rate of growth was 64% . The per-capita income of reservation Indians, however, remains just over one-third of the national average. Assuming that the 90s growth trend continues, it will take approximately 55 years for Indians living on Indian lands to match the U.S. average per capita income.

Compared with Other Americans, Indians Experience an Overall Lower Health Status. Indians have a life expectancy that is almost 4 years less than the overall U.S. population, and die at far higher rates than other Americans from a variety of diseases including alcoholism (600%), diabetes (350%), and cervical cancer (290%). The incidence of heart disease, tuberculosis, suicide, and infant mortality is also far higher for Indians than it is for the overall population.

Overcrowding Rates of Homes on Indian Reservations Were Almost Double the National Average. Indians have lower standards of living than non-Indians generally. Overcrowding tends to reflect inadequate housing availability and substandard quality of housing that is available to Indians on Indian lands. In addition to overcrowding, Indians on reservations are far less likely than are other Americans to have complete plumbing and complete kitchens. Approximately 12% of Indian homes lack safe and adequate water supply and waste disposal facilities compared to 1% of homes in America, generally.

Higher Education Attainment Among Indians on Indian lands is Rising but Will Not Be on Par with the Overall American Population for a Long While. While the gap closed slightly between 1990 and 2000, in 2000, Indians were half as likely as the overall population to have graduated from college.

With the aforementioned information in mind, this Committee makes the following recommendations:

II. Committee Recommendation

A. Department of the Interior - In General. The Budget Request includes \$10.8 billion for the Department of Interior (DoI), \$101 million (or .9%) lower than the FY2005 enacted level. Within the DoI budget, \$2.28 billion is proposed for the Bureau of Indian Affairs (BIA), a decrease of \$110 million from the FY2005 enacted level. In addition to BIA, \$303.9 million is proposed for the Office of the Special Trustee for American Indians (OST), an increase of \$75.9 million over the FY2005 enacted level.

1. Bureau of Indian Affairs .

a. Operation of Indian Programs. Within the Request for the BIA, \$1.924 billion is slated for the Operation of Indian Programs (OIP), a \$1.8 million decrease over the FY2005 level.

Tribal Priority Allocations (TPA): The Committee recommends keeping TPA funding at the FY2005 level as adjusted for inflation. Consistent with the policy of tribal self-determination, TPA gives tribes the opportunity to set their own priorities for a wide range of governmental functions including contract support costs to carry out contracts and compacts under the Indian Self-Determination and Education Assistance Act of 1975, (ISDEAA); housing repair funds for the Housing Improvement Program; road maintenance; BIA Trust Management Improvements; funds for Indian tribal courts; and funds for adult care facilities. TPA is proposed to receive \$760 million, a decrease of \$9.4 million from FY2005. BIA justifies this cut on the grounds that there is carry-over funding in the TPA account. The tremendous needs in Indian country for the TPA funds, however, suggest that responsibility for the carry-over problem, to the extent it is a problem, may rest with the agency.

Contract Support Costs: The Committee recommends that this account be increased to the FY2005 level as adjusted for inflation. This funding acts as a critical incentive to encourage the expansion of tribal contracting and compacting under the ISDEAA. The budget request proposes \$134.6 M, a decrease of \$2M below the FY2005 level.

Law Enforcement & Detention Activity: Safe and crime-free environments are critical to improving the quality of life in Indian country and are central to any effort to attract capital and employment opportunities to strengthen Indian economies. The budget request includes \$190 million for law enforcement, an increase of \$12.1 million over FY2005. The Committee supports this increase.

Tribal Courts: Because of the additional burdens placed on tribal courts, the Committee supports an increase of \$1 million over the FY2005 funding level. The Budget Request proposes a modest \$122,000 increase over FY2005 (\$17.9M). In 2001, the BIA collected Tribal court caseload information. Of the 176 Indian tribes who responded, a backlog in excess of 61,345 cases was reported. The request for additional funding is justified due to the increasing burden placed on tribal courts.

Education Activity: A total of \$756 million is proposed for BIA Education programs, including secondary and post secondary school operations and school construction.

School Construction: Funds for Indian school construction are proposed at \$173.9 million, a reduction of \$89.5 million from FY2005. The BIA has cited workforce shortages and other capacity constraints as a rationale for the decrease. The Committee does not oppose the decrease with the proviso that school construction funding must be resumed at previous levels once those constraints are resolved.

School Operations: The BIA school operations account is slated to receive \$454 million, a decrease of \$1.3 million in FY2005. Included in the request for school operations is the Indian School Equalization Program (formula funds) with a proposed increase of \$6.2 million for a total of \$354.29 million for the program. The Committee supports this increase, but suggests that further increases are needed to meet the objectives of the No Child Left Behind Act. The Committee recommends funding the Johnson O'Malley Program at the FY2005 level. The Budget Request recommends an \$8.8 million cut to this grant program designed to help Indian children who attend public schools with tutoring, cultural enrichment, and Native language education. The Johnson O'Malley Program benefits schools around the country, and virtually all of Alaska's urban and rural school districts. The Committee recommends funding Administrative Cost Grants at \$64 million to meet 100% of need. These grants provide critically needed administrative support for tribally operated schools similar to contract support costs. The BIA has acknowledged that currently it only addresses 70% of need for the Administrative Cost Grants.

Tribally Controlled Colleges: Funds for tribal colleges are proposed at \$43.4 million, a reduction of \$9.7 million below the FY2005 level and below even the FY2004 level. Tribal colleges play an important role in ensuring that Native Americans have access to higher education, and they are also engines of economic development in Indian country, where unemployment and poverty are in many cases still at unacceptably high levels. The Committee recommends that funding be restored to at least the FY2005 level, adjusted for inflation and increases in student enrollment.

United Tribes Technical College (UTTC) and Crownpoint: The Committee recommends that funding be restored to the FY2005 level plus the cost of inflation. The Committee is disturbed that UTTC and Crownpoint Institute of Technology has been zeroed out in the FY 2006 budget request. UTTC and Crownpoint have demonstrated high levels of

success in educating Indians.

2. Office of the Special Trustee (OST)

The Committee is encouraged by the continuing efforts within the DoI to improve the quality of trust services it provides to Indians and Indian tribes. However, with the overall reductions in funding in the FY2006 request for the BIA Indian education, welfare assistance, water rights negotiation, litigation as well as other areas, the Committee cannot avoid the conclusion that some of the substantial increase in funding proposed for OST, particularly the \$77.8 million increase for historical accounting, is at the expense of programs vital to improving the lives of Indian people. Also impacted are programs that have great potential for improving DoI's performance as trustee. The Committee notes that the funding requested for FY2006 for the Indian land consolidation program is only \$34,514,000, the same as the FY2005 enacted funding level—which was about \$40,000,000 less than the President's request for FY2005.

Indian Probate Reform Act: The Committee suggests that fully funding the Indian land consolidation program at \$95 million in FY2006 will serve the long term interests of both Indian country and save the Government future costs. Last year, the Congress enacted the Indian Probate Reform Act giving the DoI new tools for consolidating ownership of highly fractionated Indian lands, including an authorization of unprecedented levels of expenditure for purchasing fractional interests in land from individual Indian landowners and restoring them to tribal ownership. The Act proposes that every fractional interest acquired in this program and restored to beneficial ownership in the tribe is an interest that will never fractionate again, and that will not have to be probated again and again with future generations. As fractional interests are acquired and consolidated into beneficial tribal ownership, the administrative problems and costs associated with the management of a tract of land owned by several hundred individual Indians will be reduced dramatically. A substantially larger allocation of funding to Indian land consolidation would also make the proposed increases of \$1,600,000 in BIA Regional Office Operations and \$8,000,000 in BIA Central Office Operations, designed to reduce the staggering backlog in Indian probate cases, a much more effective investment of the Department's resources.

B. Department of Health and Human Services-In General. The President's budget request includes \$67.2 billion for HHS, a decrease of 1% from FY2005.

Indian Health Service (IHS): Approximately 1.8 million Indians nationally rely on the Indian Health Service to provide access to health care services in 49 hospitals and over 600 clinics/facilities operated by the IHS, Indian tribes, or non-profit organizations. The Indian population is younger and more rural than the overall American population, and has a disproportionate rate of disease and medical conditions.

The President has recommended a total of \$3.84 billion for the Indian Health Service in FY2006, an increase of \$72 million over the FY2005 level. Of this, \$3.05 billion is proposed for

services and facilities; \$648 million is to be collected from Medicaid, Medicare, and private insurers; and \$150 million is for the special diabetes program for Indians. Of the \$3.05 billion proposed for Health Services and Health Facilities, \$2.2 billion is recommended for Services, an increase of \$118 million, while appropriations for Facilities are proposed to decrease by \$85 million to \$135.6 million.

1. Health Services: The Committee continues to believe that the amount appropriated for IHS is inadequate to meet the needs of Indian Country and IHS's stated mission of eliminating racial and ethnic health disparities.

Indian Health Care Improvement Act: The Committee asks that the Budget Resolution contain an allocation sufficient to cover the costs of the changes we anticipate making to the Indian Health Care Improvement Act. The reauthorization, which will make healthcare more accessible, such as by waiving cost-sharing requirements for Indians participating in SCHIP and Medicaid, will slightly increase both discretionary and direct spending. A CBO cost estimate of last year's version of the reauthorization, S. 556, is attached.

Staffing and Pay: The Committee asks that the budget request include an additional \$24 million for the cost of pay increases. While the Committee is pleased that the Budget Request proposes to increase funding for Clinical Services and Preventive Health to help defray the costs of payroll increases, staffing new facilities, inflation, and population growth, the increases are not large enough to cover increases in IHS's actual costs. The budget includes \$24 million for pay increases in FY 2006, but the Committee understands that the actual cost to IHS and to tribes for pay increases will exceed this.

Contract Health Services: The Committee supports increased funding for contract services by \$25 million above the President's \$495 million request, for a total of \$522 million. Funding for Contract Health Services is used to purchase health care services from private providers when IHS facilities do not offer the needed care. The current needs for this program, estimated at \$1.2 billion per year, far outweigh available funding.

Urban Indian Health: The Committee supports increasing funding for Urban Health by \$5 million over the President's request. Urban Indian organizations have demonstrated their ability to provide high quality health services on limited budgets. The Committee is concerned, however, that the proposed budget for urban health care has been essentially flat for the past 15 years and that the increasing demand for urban health care will continue to exceed the resources proposed in this budget.

Contract Support Costs: The Committee believes that funding for Contract Support Costs should be increased, and requests that the Budget Resolution increase the President's request by \$15 million for a total of \$284 million in FY2006. The availability of Contract Support Costs is necessary for tribes to assume management and control of federal health programs under the Indian Self-Determination and Education Assistance Act of 1975. More than

50% of IHS funding and programs are now contracted or compacted by Indian tribes or tribal consortia. The Contract Support Costs account is proposed to be funded at \$269 million, a \$5 million increase over FY2005. The Committee understands, however, that the \$5 million increase is to cover the costs of new contracts, and that no increase is proposed for existing contracts.

Loan Repayment: The Administration requested \$12.6 million for this program. The Committee supports doubling this amount to \$25 million. One of the biggest problems facing Indian health is the ability to attract qualified healthcare providers. The vacancy rate for physicians and pharmacists is 11%, for nurses, 14%, and for dentists, 24%. One of the most effective programs for attracting and retaining qualified healthcare professionals has been the Indian Health Services Loan Repayment program within Indian Health Professions.

2. Health Facilities: The budget request includes \$316 million for health facilities, a substantial decrease from the FY2005 level of \$389 million. While very slight funding increases are proposed for Maintenance and Improvement; Sanitation Facilities Construction; Facilities and Environmental Health Support; and Equipment, the virtual elimination of the Health Care Facilities Construction Account (from \$88.6 million in FY2005 to \$3.3 million for FY2006) accounts for the substantial decrease.

IHS Construction: The Committee is concerned with the proposed one-year moratorium on construction, but is pleased that increases have been made to other portions of the IHS budget to try to limit erosion of existing services. The Committee understands that the IHS 5 Year Priority Construction List contains over \$1 billion in badly needed projects awaiting construction in Indian communities, and therefore hopes that the one-year moratorium lasts no longer than one year.

C. Department of Housing and Urban Development--In general. The President proposes \$28.5 billion for HUD in FY2006, a decrease from 2005 of 11%, with some large programs being transferred to the Department of Commerce.

The Native American Housing Block Grant Program (NAHBG) and Indian Community Development Block Grants (ICDBG): The Committee objects to the proposed cuts to this grant program and urges that the NAHBG be funded at the FY2005 level adjusted for inflation. The Committee further-urges that the ICDBG be funded separately at the FY2005 level of \$69 million. The Committee supports the proposed increase in funding for the Native American Housing Assistance and Self Determination Act (NAHASDA's) Title VI loan guarantee program, which is designed to allow tribes to leverage their future NAHASDA payments to secure federally-backed loans from commercial lenders. Consistent with the goals of self-governance, NAHASDA authorized direct block grants to tribal governments or tribally-designated housing entities to develop, maintain, and administer safe and affordable housing for low income Indians. Despite the still deplorable state of Indian housing and the success of the NAHASDA program in ameliorating the problem, the budget request significantly cuts the block

grant program from \$627 million in FY 20005 to \$582 million in FY2006. The amount actually available for Indian housing grants, however, will be considerably less than \$582 million as the budget further proposes to earmark \$58 million of this amount for the Indian Community Development Block Grant (ICDBG) program, a program that is currently funded separately at \$69 million.

D. Department of Education. The FY2006 budget request proposed a 1% decrease, to \$56 billion, in total discretionary budget authority for the Department of Education. The DoED also administers the Impact Aid Program which ameliorates the impact of non-taxable lands on local communities and local education agencies (LEAs). These lands include Federal lands and Indian lands.

1. Office of Elementary and Secondary Education. In Title I of the Elementary and Secondary Education Act (ESEA) the request provides \$13.3 billion for FY 2006, a 4.7 % increase above the FY 2005 requested level. Under provisions of the No Child Left Behind Act (NCLBA) of 2001, the Department may reserve up to 1% of Title I appropriations for the BIA LEA grants. The Committee understands that in FY2006, the BIA's Office of Indian Programs will receive \$95.8 million. The Committee supports this request for increased funding.

a. Impact Aid.

Basic Support Payments: These accounts provide financial assistance to many state funded LEAs that educate Indian children. The overall request of \$1.1 billion provides approximately \$507.5 million for the impacts of Indian lands, the same funding level provided in the FY2005 appropriations.

Children with Disabilities: The Impact Aid request would also provide \$21.2 million for Payments for Children with Disabilities. The request is a slight decrease from the funding provided in the FY2005 appropriations.

Construction grants: School districts impacted by Indian lands will also be eligible for Impact Aid Construction grants. Under the FY2006 request, approximately \$9.1 million in formula grants would go to districts on behalf of students residing on Indian lands. Also, districts with high concentrations of students living on Indian lands would be eligible for \$27.3 million in competitive construction grants.

2. Office of Indian Education. The request for Indian Education Programs is \$119.9 million. These programs include \$96.3 million for Indian Education formula grants to Local Educational Agencies and Special Programs for Indian Children. The Committee supports funding for these programs and urges that they be funded at the FY2005 level at a minimum.

3. Office of Vocational and Adult Education. The Budget proposes to zero out the Vocational and Technical Education program, out of which \$14.9 million for competitive

grants was set aside for tribes in FY2005. The Committee urges that the \$14.9 million be retained in the FY2006 budget.

4. Office of Post Secondary Education. The Committee supports, at a minimum, level funding as adjusted for inflation, to continue tribal higher education institutions' success in educating Indians. The Tribally Controlled Post-Secondary Vocational and Technical Institutions program, which the budget proposes to move to Higher Education Vocational and Adult Education, would receive level funding at \$7.4 million. The FY2006 request for Strengthening Tribally Owned Colleges and Universities program is also moved to Higher Education and is funded at \$23.8 million, level funding with FY2005. This amount includes \$13.8 million for construction and renovation activities.

E. Department of Justice. The Committee strongly opposes the recommendation to abolish the Indian Assistance Program (IAP) and to move all tribal activities thereunder, into COPS. The Committee opposes subjecting tribal judicial activity (except those activities traditionally funded under COPS) to COPS's three-year non-reoccurring funding scheme. The Committee recommends that the FY2005 funding level for IAP be increased or maintained at the FY2005 level. The Committee understands that funding for law enforcement and justice systems is one of the highest priorities for Indian tribes in FY2006 as tribal law enforcement is often the only law enforcement service available in Indian country. Indian tribes have broad civil jurisdiction, and criminal jurisdiction for offenses committed by Indians on Indian land, and they rely on tribal judicial systems to maintain law and order.

Office for Justice Programs and COPS: The IAP has historically supported tribal police services, courts, legal representation, and juvenile and behavioral health programs. In FY2005, \$18 million was provided for: Indian detention facilities (\$5M); tribal courts (\$8M) and alcohol and crime demonstration grants (\$5M). Tribes were also provided \$10 million under separate Juvenile Justice Assistance grants. Combined, in FY2005, Indian programs received a total of \$48 million through the following programs: COPS (\$20M), Indian Assistance Program allocation (\$18M) and Juvenile Justice Indian youth grants (\$10M). The FY2006 COPS request of \$51.6 M, therefore, is \$3.6 million above the FY2005 level. This is still insufficient to fund over 171 tribal law enforcement agencies, tribal courts and their affiliated programs.

In FY2005, Indian tribes received \$20M for COPS. However, as this is a non-reoccurring fund, once the 3-year assistance period is over, tribes must find the means to fund their police force out of existing tribal or BIA funds. As stated above, the BIA FY2006 funding request seeks minimal funding for tribal courts, no funding for substance abuse programs and only \$2.5 million to expand law enforcement (33 FTE) for the Southwest border and specific regions with high violent crime rates. The BIA must also assume responsibility for expiring COPS positions originally funded by the DOJ. The BIA, alone, does not have the means to provide funds to supplement tribal courts, legal representation, juvenile justice and corresponding behavioral programs.

Justice Assistance Account: The Committee opposes subjecting tribes to competition with state and local governments for activities funded by the new Justice Assistance Account. Indian tribes will not fare well if made to compete with state and local governments under the new Justice Assistance Account. Tribes rarely, if ever, receive direct or pass through state funding for police or judicial activities on Indian lands. States and county governments view these activities as local jurisdictional responsibilities. Tribal police are first responders and federal or county police often respond late or not at all. Without OJP's continued and consistent funding for tribal justice programs, administering law and order in Indian Country will be impossible.

F. Environmental Protection Agency The FY2006 budget request proposes \$2.35 billion in total discretionary budget authority for EPA, a \$40 million increase from the FY2005 level.

1. State and Tribal Assistance Grants (STAGs). The STAGs provide for environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance grants. The budget request is a \$643.9 million decrease from the FY 2005 requested level, to \$2.9 billion for FY 2006.

a. Clean Water State Revolving Fund (CWSRF). The Committee is concerned about the decrease in funding for the Clean Water State Revolving Fund (CWSRF), from which tribes receive 1.5%. The CWSRF helps tribes and states meet their significant infrastructure needs by funding the construction of wastewater treatment facilities and other water projects, including non-point source, storm water, and sewer overflow. The CWSRF was funded at \$850 million in 2004, level funded in 2005, and the FY2006 request decreases the fund to \$730 million. The level of need in Indian Country, however, is far greater than the amount it currently receives. The EPA and the Indian Health Service estimated in FY 2005 that it would cost more than \$650 million to correct inadequate wastewater treatment systems or to construct systems where none currently exist.

b. Alaska Native Villages. The Committee is concerned about the proposed decrease, from \$40 million in FY2005 to \$15 million in FY2006, for Alaska Native Villages. This STAG program provides for construction of wastewater and drinking water facilities to address serious sanitation problems. The EPA estimates that more than 20,000 homes in Native villages lack basic sanitation facilities.

c. Indian Environmental General Assistance Program (GAP). The Committee would also like to see increases in the GAP program which has been slated for a \$5 million cut, decreased to \$57.5 million for FY 2006. GAP provides federally recognized tribes and inter-tribal consortia funds to develop, implement, and assume environmental programs.

d. State & Tribal Performance Fund (STFP): The Committee supports the \$23 million request for creating the new STFP. This performance grants program that will be

available to states and tribes on a competitive basis. The STFP will encourage development of projects with tangible, performance-based environmental and health outcomes that can be models for implementation across the nation.

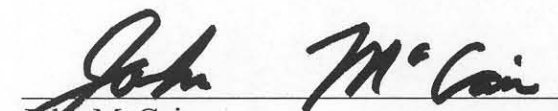
G. Department of Agriculture (USDA). With agriculture as the second largest employer in Indian communities, the USDA plays a fundamental role in aiding Indian economic and community development. The Committee is pleased by the \$43 million increase in the overall request for the Farm Service Agency (FSA).

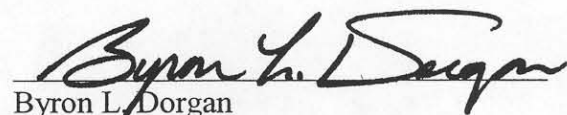
The Committee wants to ensure that Indians continue to participate fully in the Food Stamp Program; Child Nutrition Program; Women, Infants and Children Program; and the Food Distribution Program on Indian Reservations (FDPIR).

Rural Development Programs(RD): The Committee seeks \$25 million in funding for Water and Waste Disposal Direct Loans and Grants for Indians, and urges restoration of the Tribal College Grant account. The Committee is concerned with a proposed \$16 million cut in FY2006 for the Water and Waste Disposal Direct Loans and Grants for Indians within the Rural Development Programs, and requests that the FY 2005 enacted funding level of \$25 million be maintained.

The Committee on Indian Affairs appreciates the opportunity to give its views on the proposed budget and looks forward to continuing to work with you to ensure that programs that serve Indians are adequately funded.

Sincerely,


John McCain
Chairman


Byron L. Dorgan
Vice Chairman